



TaxNewsFlash

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Notice 2018-99: Parking expenses as qualified transportation fringe benefits, nondeductible amount

The IRS today released an advance version of Notice 2018-99 as interim guidance for taxpayers to use in determining the amount of parking expenses for qualified transportation fringe (QTF) benefits that is nondeductible under section 274(a)(4) and for tax-exempt organizations to determine the corresponding increase in the amount of unrelated business taxable income (UBTI) under section 512(a)(7) attributable to the nondeductible parking expenses.

[Notice 2018-99](#) [PDF 171 KB] provides guidance about how to determine the amount of parking expenses that is nondeductible or treated as an increase in UBTI.

Background

Sections 274 and 512 were amended by the U.S. tax law (Pub. L. No. 115-97, date of enactment December 22, 2017)—the law that is also referred to as the “Tax Cuts and Jobs Act” (TCJA).

Under the tax law changes, section 274(a)(4) generally disallows a deduction for expenses with respect to QTFs provided by taxpayers to their employees. Section 512(a)(7) generally provides that a tax-exempt organization’s UBTI is increased by the amount of the QTF expense that is nondeductible under section 274.

As noted in the IRS release, the new tax law does not address how to determine the amount of the QTF expense that is nondeductible or treated as an increase in UBTI.

Notice 2018-99

Notice 2018-99 provides guidance for determining the nondeductible amount of parking expenses as well as the amount to be treated as increasing UBTI. The method of determining the nondeductible amount relates to the expense of providing a QTF (not its

value) and depends on whether the taxpayer pays a third party to provide parking for its employees or whether the taxpayer owns or leases a parking facility where the employees park.

- **Taxpayer pays a third party for employee parking:** If a taxpayer pays a third party an amount so that its employees may park at the third party's parking lot or garage, the section 274(a)(4) disallowance generally is calculated as the taxpayer's total annual cost of employee parking paid to the third party. However, if the amount the taxpayer pays to a third party for an employee's parking exceeds the section 132(f)(2) monthly limitation on exclusion (\$260 per employee for 2018), that excess amount must be treated by the taxpayer as compensation and wages to the employee. In other words, the total of the monthly amount in excess of \$260 that is treated as compensation and wages is excepted from the taxpayer's section 274(a) disallowance amount by section 274(e)(2).
- **Taxpayer owns or leases all or a portion of a parking facility:** If a taxpayer owns or leases all or a portion of one or more parking facilities where its employees park, the section 274(a)(4) disallowance may be calculated using any reasonable method. Notice 2018-99 establishes a four-step method that may be used as a safe harbor:
 1. *Percentage of parking spots reserved for employee use*
This percentage of parking expenses is non-deductible under section 274(a)(4).
 2. *Primary use of remaining parking spots*
If the primary use (i.e., greater than 50%) of the remaining parking spots is for the general public, the remaining parking expenses remain deductible.
 3. *Percentage of parking spots reserved for non-employee use*
If the primary use is not for the general public, then the percentage of parking expenses attributed to reserved spots for non-employee use remain deductible.
 4. *Reasonable allocation of remaining parking spots*
Taxpayer must reasonably determine the employee use of any remaining parking expenses not specifically categorized as deductible or non-deductible based on a typical business day.

The IRS notice further provides that using the value of employee parking to determine expenses allocable to employee parking in a parking facility owned or leased by the taxpayer is not a reasonable method because section 274(a)(4) disallows a deduction for the expense of providing a QTF, regardless of its value. **The notice provides that parking expenses do not include depreciation, but do include repairs, maintenance, utility costs, insurance, property taxes, interest, removal of snow, ice, leaf and trash, cleaning, landscape costs, parking lot attendant expenses, security, rent or lease payment or a portion of rent or lease payments.** For tax years beginning on or after January 1, 2019, a method that fails to allocate expenses to "reserved employee spots" cannot be a reasonable method; however, Notice 2018-99 provides a rule that changes in employee reserved spot designations made by March 31, 2019, may be treated as applying retroactively for these purposes.

As further emphasized in a related IRS release—[IR-2018-247](#)—a key part of today's IRS guidance is a special rule allowing “employers to retroactively reduce the amount of their nondeductible parking expenses” if they make changes to their parking arrangements or reduce the number of reserved parking spots by March 31, 2019.

Future regulations

Notice 2018-99 states that the IRS and Treasury intend to publish proposed regulations under sections 274 and 512, and that those proposed regulations will include guidance on the determination of nondeductible parking expenses and other expenses for QTFs and the calculation of increased UBTI attributable to QTFs.

Until the regulatory guidance is issued, taxpayers and tax-exempt organizations that own or lease parking facilities where their employees park may use “any reasonable method” as provided by Notice 2018-99 to determine the amount of nondeductible expenses under section 274(a)(4) or the amount of the increase in UBTI under section 512(a)(7).

Also, until those proposed regulations are issued, taxpayers may rely on the guidance in Notice 2018-99 to determine the amount of nondeductible parking expenses for QTFs under section 274(a)(4), and tax-exempt organizations may rely on the guidance in this notice to determine the amount of the increase in UBTI under section 512(a)(7).

Notice 2018-100

A separate IRS notice—[Notice 2018-100](#) [PDF 82 KB]—provides for certain exempt organizations relief from the estimated tax penalty in 2018 for parking QTF benefits for those entities that were not previously required to file a Form 990-T or that will not exceed the \$1,000 threshold below which an organization is not required to file a Form 990-T or pay the unrelated business income tax.

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